

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

<b>PHIL MYERS,</b>	§	
<b>Petitioner,</b>	§	
	§	
<b>v.</b>	§	<b>Civil Action No. 4:08-CV-176-Y</b>
	§	
<b>REBECCA TAMEZ, Warden,</b>	§	
<b>FCI-Fort Worth,</b>	§	
<b>Respondent.</b>	§	

**FINDINGS, CONCLUSIONS AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND NOTICE AND ORDER**

This cause of action was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b), as implemented by an order of the United States District Court for the Northern District of Texas. The Findings, Conclusions and Recommendation of the United States Magistrate Judge are as follows:

**I. FINDINGS AND CONCLUSIONS**

**A. NATURE OF THE CASE**

This is a petition for writ of habeas corpus by a federal prisoner pursuant to 28 U.S.C. § 2241.

**B. PARTIES**

Petitioner Phil Myers, Reg. No. 33992-177, was a federal prisoner incarcerated in the Federal Correctional Institution in Fort Worth, Texas (FCI-Fort Worth) at the time this petition was filed.

Respondent Rebecca Tamez is Warden of FCI-Fort Worth.

**C. PROCEDURAL HISTORY**

Myers was serving a 24-month term of imprisonment for his conviction for willful failure to file an income tax return in violation of 26 U.S.C. § 7203 in the United States District Court for the Northern District of Texas, Fort Worth Division, Criminal Docket # 4:05-CR-194-Y. *See* CM/ECF,

Criminal Docket for Case # 4:05-CR-194-Y. (Resp't Appendix to Response, at 1) He has a one-year term of supervision after serving the incarcerative portion of his punishment. In this petition, Myers requests immediate release from FCI-Fort Worth to seek adequate medical care. (Petition at 4) Myers has notified this court of his release and change of address to 910 Janis Street, Granbury, Texas 76049. *See also* U.S. Department of Justice, Federal Bureau of Prisons/Inmate Locator, available at <http://www.bop.gov>.

#### D. DISCUSSION

Because Myers has been released from federal custody, this court can no longer provide him with the relief he seeks—*i.e.*, release to seek adequate medical care. *See Bailey v. Southerland*, 821 F.2d 277, 278-79 (5<sup>th</sup> Cir. 1987). Myers is no longer confined nor has he demonstrated that he is suffering any current collateral consequences or that he will suffer any collateral consequences in the future. *See Spencer v. Kemna*, 523 U.S. 1, 7-8 (1998). Dismissal of this petition is therefore appropriate as moot based upon Myers's release. *See Lane v. Williams*, 455 U.S. 624, 632 (1982); *McRae v. Hogan*, 576 F.2d 615, 616-17 (5<sup>th</sup> Cir. 1978).

#### II. RECOMMENDATION

Myers's petition should be DISMISSED as moot.

#### III. NOTICE OF RIGHT TO OBJECT TO PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATION AND CONSEQUENCES OF FAILURE TO OBJECT

Under 28 U.S.C. § 636(b)(1), each party to this action has the right to serve and file specific written objections in the United States District Court to the United States Magistrate Judge's proposed findings, conclusions, and recommendation within ten (10) days after the party has been served with a copy of this document. The court is extending the deadline within which to file specific

written objections to the United States Magistrate Judge's proposed findings, conclusions, and recommendation until August 7, 2008. The United States District Judge need only make a *de novo* determination of those portions of the United States Magistrate Judge's proposed findings, conclusions, and recommendation to which specific objection is timely made. *See* 28 U.S.C. § 636(B)(1). Failure to file by the date stated above a specific written objection to a proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any such proposed factual finding or legal conclusion accepted by the United States District Judge. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5<sup>th</sup> Cir. 1996) (en banc op. on reh'g); *Carter v. Collins*, 918 F.2d 1198, 1203 (5<sup>th</sup> Cir. 1990).

#### **IV. ORDER**

Under 28 U.S.C. § 636, it is ORDERED that each party is granted until August 7, 2008, to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions, and recommendation. It is further ORDERED that if objections are filed and the opposing party chooses to file a response, a response shall be filed within seven (7) days of the filing date of the objections.

It is further ORDERED that the above-styled and numbered action, previously referred to the United States Magistrate Judge for findings, conclusions, and recommendation, be and hereby is returned to the docket of the United States District Judge.

SIGNED July 17, 2008.

/s/ Charles Bleil  
CHARLES BLEIL  
UNITED STATES MAGISTRATE JUDGE